**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NICOLA DEIULIIS, a minor, by his guardian, ANNETTE DEIULIIS, and ANNETTE DEIULIIS in her own right,	)	
Plaintiff,	)	
v.	)	Civil Action No. 05-01077
BOY SCOUTS OF AMERICA NATIONAL COUNCIL,	)	
Defendant.	)	

APPENDIX IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Exhibit	Description
A	Complaint
B	Fed R. Civ. P. 26(f) Report of the Parties
C	Affidavit of Michael C. Childers

Respectfully submitted,

BURNS, WHITE & HICKTON

BY: ______________________

David B. White
PA I.D. No. 36684
Mark E. Schweers, Jr.
PA I.D. No. 92789

Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000
(412) 995-3300 (fax)

Counsel for Defendant
Boy Scouts of America National Council

Dated: March 9, 2006

Dockets.Justia.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NICOLA DeIULIIS, a minor, by his Guardian, ANNETTE DeIULIIS, and ANNETTE DeIULIIS, in her own right,	]	CIVIL DIVISION
Plaintiffs	]	No. 2:05-cv-1077
vs.	]	
BOY SCOUTS OF AMERICA NATIONAL COUNCIL,	]	
Defendant.	]	

COMPLAINT

1. Plaintiffs are citizens of the Commonwealth of Pennsylvania; Defendant, Boy Scouts of America National Council, is a corporation incorporated under the laws of the state of Texas, having its principal place of business within the state of Texas. The matter in controversy exceeds, exclusive of interest and costs, the sum of $75,000.00.

2. On Sunday, August 15, 2004, at approximately 12:49 p.m. on State Route 366 in Washington Township, Westmoreland County, an agent and/or registered volunteer of the Defendant, Boy Scouts of America, while in the course of his duties as an agent or a volunteer, willfully, recklessly or negligently drove the motor vehicle which he was operating, in which the minor Plaintiff was a passenger, off the roadway and into a drainage ditch and then an embankment.

3. As a result, the minor Plaintiff was thrown about the interior of the vehicle and suffered severe and irreversible damage to his internal organs and other parts of his body which has resulted in global, as well as specific harm; the minor Plaintiff has also sustained a loss of his ability to earn a living in the future; he and his family have suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the past and will continue to incur such expenses in the future.

EXHIBIT
A

tabbies

4. Annette DeIuliis, the Parent and Guardian of Nicola DeIuliis, has suffered independent financial injury and great pain of body and mind as a direct result of her son's injuries.

5. The injuries to the Plaintiffs are the product of deliberate indifference and constitute reckless and outrageous conduct on the part of the Defendant, warranting the assessment of exemplary damages against the Defendant.

WHEREFORE, Plaintiffs demand judgment against Defendant for economic losses, past medical expenses, damages for future medical and health care expenses, general damages as allowed by law, punitive damages, and costs.

Respectfully submitted,

PRIBANIC & PRIBANIC, L.L.C.

By: ______________________
Victor H. Pribanic
Pa. I.D. No. 30785

____
Sherie Lynn Painter
Pa. I.D. No.: 92820

1735 Lincoln Way
White Oak, Pennsylvania 15131
(412) 672-5444

Counsel for Plaintiffs, Nicola DeIuliis, a Minor, by his Guardian, Annette DeIuliis, and Annette DeIuliis, in her own right

JURY TRIAL DEMANDED

RECEIVED
AUG 10 2005
RISK MGMT

AO 398 (12/93)

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) BOY SCOUTS OF AMERICA NATIONAL COUNCIL

as (B)__________ of (C)__________

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Western District of Pennsylvania and has been assigned the docket number (E) 2:05-cv-1077.

This is not a formal summons or notification from the Court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of a cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the Court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from the date if you address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the Court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 5th day of August, 2005.

[signature]
Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

A -Name of individual defendant (or name of officer or agent of corporate defendant)
B -Title, or other relationship of individual to corporate defendant
C -Name of corporate defendant, if any
D -District
E -Docket number of action
F -Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

-Copy-

AO 399 (12/93)

WAIVER OF SERVICE OF SUMMONS

TO: Victor H. Pribanic, Esq. and/or Sherie L. Painter, Esq.
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I acknowledge receipt of your request that I waive service of a summons in the action of DeIuliis, et al. v. Boy Scouts of America Nat'l Council (CAPTION OF ACTION), which is case number 2:05-cv-1077 (DOCKET NUMBER) in the United States District Court for the Western District of Pennsylvania. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court except for objections base on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after August 5, 2005 (Date Request was sent), or within 90 days after that date if the request was sent outside the United States.

_______________ (DATE) _______________________________

Print/Typed Name _______________________________

As _______________ (Title) of _______________ (Corporate Defendant)

Duty to avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the Court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received,

NOTE TO PUBLIC ACCESS USERS You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.

U.S. District Court

Western District of Pennsylvania

Notice of Electronic Filing

The following transaction was received from Victor H. Pribanic entered on 8/4/2005 at 5:27 PM EDT and filed on 8/3/2005

Case Name: DEIULIIS et al v. BOY SCOUTS OF AMERICA NATIONAL COUNCIL
Case Number: 2:05-cv-1077
Filer: NICOLA DEIULIIS
ANNETTE DEIULIIS
Document Number: 1

Docket Text:
COMPLAINT against BOY SCOUTS OF AMERICA NATIONAL COUNCIL (Filing fee $ 250 receipt number 05-4854.), filed by NICOLA DEIULIIS, ANNETTE DEIULIIS. (Attachments: # (1) Civil Cover Sheet # (2) Summons)(ksa)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1098469114 [Date=8/4/2005] [FileNumber=34185-0] [
c6ff2c1596ec1a93f84940a501a38cf7e7fc40aadd1c2c9680c6364da5c6fdc309aa16
8fd276615b6521e9c5baad8b604d3ecaca7e6517bf568bf75e7d8c15c8]]
Document description: Civil Cover Sheet
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1098469114 [Date=8/4/2005] [FileNumber=34185-1] [
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37d09070de1e4b59b812439e743032c6b7fd41cc283e7e80f5d78e23d2]]
Document description: Summons
Original filename:n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1098469114 [Date=8/4/2005] [FileNumber=34185-2] [
9d108312a40fd31b1aa847fc420ab12c50ca6c3e4298c434a2268f5b07b97e8a026c0a
a2909d98ef58cc18888345b4660ef0bee60509a96c9020496e3745423b]]

2:05-cv-1077 Notice will be electronically mailed to:

Sherie L. Painter spainter@pribanic.com

Victor H. Pribanic spainter@pribanic.com

2:05-cv-1077 Notice will be delivered by other means to:

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filir... d service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

NICOLA DeIULIIS, a minor, by his Guardian, ANNETTE DeIULIIS, and ANNETTE DeIULIIS, in her own right,

(b) County of Residence of First Listed Plaintiff Westmoreland
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Victor H. Pribanic
Sherie Lynn Painter
PRIBANIC & PRIBANIC, LLC, 1735 Lincoln Way
White Oak, PA 15131 (412 672-5444

DEFENDANTS

BOY SCOUTS OF AMERICA NATIONAL COUNCIL

County of Residence of First Listed Defendant Unknown
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☒ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury—Med. Malpractice
- ☐ 365 Personal Injury — Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence
- Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes
- ☐ 890 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C §1332 - Diversity of Citizenship and 28 U.S.C. §1391 - Venue

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ in excess of $75,000 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY (See instructions): None JUDGE ______ DOCKET NUMBER ______

DATE 8/2/05 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

JS 44A

REVISED OCTOBER, 1993

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (_____ Erie _____ Johnstown __X__ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venango or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset, OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in ____________ County and that the ____________ resides in ____________ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in ____________ County and that the ____________ resides in ____________ County.

PART B (You are to check **ONE** of the following)

1. _____ This case is related to Number ____________, Judge ____________.
2. __X__ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit, or involves the same issues of fact or it grows out of the same transactions as another suit, or involves the validity or infringement of a patent involved in another suit.

EMINENT DOMAIN: Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

1. **CIVIL CATEGORY** (Place x in only applicable category).
   1. ( ) Antitrust and Securities Act Cases
   2. ( ) Labor-Management Relations
   3. ( ) Habeas Corpus
   4. ( ) Civil Rights
   5. ( ) Patent, Copyright, and Trademark
   6. ( ) Eminent Domain
   7. ( ) All other federal question cases
   8. (X) All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest.
   9. ( ) Insurance indemnity, contract, and other diversity cases.
   10. ( ) Government Collection Cases (shall include HEW Student Loans (Education), VA Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, S.B.A. Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct.

Date: 8/2/05

[signature]
ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH SIDES MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NICOLA DeIULIIS, a minor, by his Guardian, ANNETTE DeIULIIS, and ANNETTE DeIULIIS, in her own right,	]	**CIVIL DIVISION**
	]	No. CA 5-1077
Plaintiffs	]	The Honorable Donetta W. Ambrose
vs.	]	
BOY SCOUTS OF AMERICA NATIONAL COUNCIL,	]	
Defendant.	]	

Fed. R. Civ. P. 26(f) REPORT OF THE PARTIES

AND NOW comes Plaintiffs, Nicola Deluliis, a minor by his Guardian, Annette Deluliis, and Annette Deluliis, in her own right, by and through their attorneys, Victor H. Pribanic, Esquire, Sherie Lynn Painter, and Pribanic & Pribanic, L.L.C., and Defendant, Boy Scouts of America National Council, by and through its attorneys, David B. White, Esquire, and Burns, White & Hickton, and respectfully file the within Fed. R.Civ.P 26(f) Report of the Parties and further aver as follows:

1. Identification of counsel and unrepresented parties. The following attorneys are the counsel of record in the captioned matter:

Victor H. Pribanic, Esquire
Sherie Lynn Painter, Esquire
PRIBANIC & PRIBANIC, LLC
1735 Lincoln Way
White Oak, PA 15131
(412) 672-5444
(412) 672-3715 fax
spainter@pribanic.com
Counsel for Plaintiffs

David B. White, Esquire
Mark E. Schweers, Jr., Esquire
BURNS, WHITE & HICKTON, LLC
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000
(412) 995-3300 fax
dbwhite@bwhllc.com
Counsel for Defendant

EXHIBIT
B

2. General nature of the case: On Sunday, August 15, 2004, at approximately 12:49 p.m. on State Route 366 in Washington Township, Westmoreland County, Minor-Plaintiff, Nicola DeIuliis, was injured in a one-vehicle accident while a passenger in a van operated by Samuel Lombardo. Mr. Lombardo was returning from a Boy Scouts outing from Ohio Pyle State Park with a group of boy scouts. As a result of the accident, Minor-Plaintiff sustained serious injuries to his internal organs and other parts of his body. It is alleged that as a result of the accident the Minor-Plaintiff may have sustained a loss of his ability to earn a living in the future. It is further alleged that the minor Plaintiff has also sustained a loss of his ability to earn a living in the future; he and his family have incurred expenses for medical attention and hospitalization in the past and may continue to incur such expenses in the future.

3. The Rule 26(f) Conference was held on Friday, October 7, 2005 between Sherie Lynn Painter on behalf of the Plaintiffs, and Mark E. Schweers, Jr., on behalf of the Defendant.

4. This Honorable Court has scheduled the Rule 16 Initial Scheduling Conference for Tuesday, November 8, 2005 at 9:15 a.m. in Suite 3280, Third Floor, U.S. Post Office and Courthouse Building, Pittsburgh, Pennsylvania. (Lead Trial Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference with their calendars in hand for the purpose of scheduling other pre-trial events and procedures, including a Post-Discovery Status Conference; Counsel and unrepresented parties shall attend the Rule 16 Initial Scheduling Conference prepared to discuss the anticipated number of depositions and identities of potential deponents and the anticipated dates by which interrogatories, requests for production of documents and requests for admissions will be served).

5. To date, no party to this matter has filed a dispositive motion pursuant to Fed.R.Civ.P. 12. It is presently undetermined if any party will in fact file a dispositive motion pursuant to Fed. R. Civ. P. 12. The parties agree that any dispositive motion and brief in support shall be filed on or before 45 days after the close of discovery. The party responding to the dispositive motion shall have three weeks to respond to an opposing party's motion. A reply brief

shall be due 5 business days after receipt of the response brief. The parties agree that if the parties do not file motions for judgment on the pleadings, for summary judgment, or to dismiss, plaintiff's pre-trial narrative statement will be filed by Monday, April 3, 2006. Defendant's pre-trial narrative statement shall be due within 30 days of the filing of plaintiff's pre-trial statement in accordance with Local Rule 16.1.4B.

6. To date, there has been no specific Alternative Dispute Resolution (ADR) discussed. The parties agree that if they elect to engage in the ADR process, the completion of the ADR process will be on or before Tuesday, February 28, 2006.

7. Rule 26(a)(1) disclosures will be exchanged by the parties on or before Friday, November 4, 2005.

8. Subjects on which fact discovery may be needed. (By executing this report, no party shall be deemed to (1) have waived the right to conduct discovery on subjects not listed herein or (2) be required to first seek the permission of the Court to conduct discovery with regard to subjects not listed herein): Generally, it is believed that fact discovery may be necessary regarding: (1) the incident which is the subject of Plaintiff's Complaint and (2) the injuries and damages Plaintiff's claim arising from the incident at issue.

9. The parties have agreed to the proposed suggested dates for the following:

a. Disclosures required by Fed. R. Civ. P. 26(a) are to be made on or before Friday, November 4, 2005;
b. Any additional parties shall be joined on or before Friday, January 6, 2006;
c. The pleadings shall be amended on or before Friday, December 23, 2005;
d. Fact discovery should be completed on or before Friday, March 3, 2006;
e. The parties agree that discovery should not be conducted in phases nor should it be limited to or focused on particular issues;
f. Plaintiffs' expert reports should be filed on or before Monday, March 13, 2006;

g. Depositions of plaintiffs' expert(s) should be completed on or before May 31, 2006;

h. Defendant's expert reports should be filed on or before Monday, April 3, 2006;

i. Depositions of defendant's expert(s) should be completed on or before May 31, 2006;

j. Third party expert's reports should be filed on or before April 13, 2006; and,

k. Depositions of third party's expert(s) should be completed on or before May 31, 2006.

10. The parties agree that no changes should be made to the limitations on discovery imposed by the Federal Rules of Civil Procedure or Local Rule and/or that no other limitations should be imposed on discovery.

11. The parties agree there is no need for special deadlines, procedures or orders of court dealing with discovery of electronically-stored information (electronic discovery).

12. The parties have elected to schedule the Post-Discovery Status Conference following the completion of Expert Discovery. The parties shall be prepared at the Post-Discovery Status Conference to discuss and/or schedule the following: (The parties are not required during their Rule 26(f) Conference to consider or propose dates for the items identified below. Those dates will be determined, if necessary, at the Post-Discovery Status Conference. Lead trial counsel for each party and each unrepresented party are required to attend the Post-Discovery Status Conference with their calendars in hand to discuss those items listed below that require scheduling. In addition, a representative with settlement authority of each party shall be required to attend; representatives with settlement authority of any insurance company providing any coverage shall be available throughout the Conference by telephone):

a. Settlement and/or transfer to an ADR procedure;

b. Dates for the filing of expert reports and the completion of expert discovery as itemized in sub-paragraphs 9.f. through 9.k., above, if the parties elected to defer such discovery until after the Post Discovery Status Conference

c. Dates by which dispositive motions pursuant to Fed. R. Civ. P. 56, replies thereto and responses to replies should be filed;

d. Dates by which parties' pre-trial statements should be filed;

e. Dates by which in limine and Daubert motions and responses thereto should be filed;

f. Dates on which motions in limine and Daubert motions shall be heard;

g. Dates proposed for final pre-trial conference;

h. Presumptive and final trial dates.

13. At this time, the parties are unaware of any additional orders necessary under Fed.R.Civ.P. 16(b) or 26(c).

14. The parties do not anticipate the court needing to appoint a special master to deal with any matter regarding this case.

15. The parties have agreed with regard to all subjects for which a report is required as set forth above.

16. At this time, the parties have not considered the possibility of settlement of the action as discovery in this matter has just begun.

Case 2:05-cv-010.. -DWA Document 9 Filed 10/14/2005 Page 6 of 7

RESPECTFULLY SUBMITTED,

/MES per SLP

VICTOR H. PRIBANIC
Counsel for Plaintiff
PA I.D. No.: 30785

PRIBANIC & PRIBANIC, LLC
1735 Lincoln Way
White Oak, PA 15131
(412) 672-5444 SLP

/MES

DAVID B. WHITE
Counsel for Defendant
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

NICOLA DeIULIIS, a minor, by his Guardian, ANNETTE DeIULIIS, and ANNETTE DeIULIIS, in her own right,	]	**CIVIL DIVISION**
	]	No. CA 5-1077
Plaintiffs	]	The Honorable Donetta W. Ambrose
vs.	]	
BOY SCOUTS OF AMERICA NATIONAL COUNCIL,	]	
Defendant.	]	

ORDER OF COURT

AND NOW, to wit, this ______ day of ________________, 2005, **IT IS HEREBY ORDERED** that the Fed. R. Civ. P. 26(f) Report of the Parties is approved.

BY THE COURT,

______________________________ J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

NICOLA DEIULIIS, a minor, by his Guardian, ANNETTE DEIULIIS, and ANNETTE DEIULIIS in her own right,

Plaintiffs,

v.

BOY SCOUTS OF AMERICA NATIONAL COUNCIL.

Defendants.

Civil Action No. 05-01077

Chief Judge Ambrose

STATE OF NEW JERSEY)
) ss:
COUNTY OF MIDDLESEX)

AFFIDAVIT OF MICHAEL C. CHILDERS

Before me, the undersigned authority, personally appeared Michael C. Childers, who deposes and testifies as follows:

1. My name is Michael C. Childers. I am employed by Boy Scouts of America National Council ("BSA"), as its Deputy Regional Director\Operations, Northeast Region. My mailing address is 10 Centre Drive, P.O. Box 268, Jamesburg, New Jersey, 08831. I make this affidavit based on my own personal knowledge.

2. As a Deputy Regional Director for BSA, I am intimately familiar with the organization's charter, bylaws and corporate structure of the Boy Scouts of America. I have also reviewed the allegations contained in the instant lawsuit filed against BSA.

EXHIBIT
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3. BSA is a not-for-profit corporation created by act of Congress, and headquartered in Irving, Texas. The purposes of BSA are to promote, through organization and cooperation with other agencies, the ability of boys to do things for themselves and others, to train them in scoutcraft, and to teach them patriotism, courage, self-reliance and kindred virtues. To accomplish its Congressional mission the BSA created a youth development program, referred to as the "scouting program."

4. BSA is divided into four "Regions." Within distinct geographical areas of each Region are independent local "councils"; in this case the local council is the Greater Pittsburgh Council. Councils are self-sustained organizations, which are not under the day-to-day control of BSA and which receive no financial support from BSA. In addition, these councils are separate, independent legal entities incorporated under the laws of their respective states. A council, within its geographic area, makes the scouting program available to local organizations which desire to sponsor a local "unit", in this case a "scout troop." These sponsoring organizations are referred to as "chartered organizations."

5. BSA charters are typically issued to schools, churches, or similar civic organizations; in this case the chartering organization is Mount St. Peter Church. The chartering organization then organizes a troop committee, which usually is comprised of both scout parents and members of the charting organization. It is this troop committee which selects its volunteer adult leaders and which operates the troop.

6. The events as alleged in this lawsuit took place within the geographic area of the Greater Pittsburgh Council of the Boy Scouts of America. The Plaintiff, Nicola Deiuliis,

was a member of a unit sponsored by Mount St. Peter Church, Troop 903. The church is headquartered in New Kensington, Pennsylvania.

7. Pursuant to its Charter and Bylaws, BSA does not in any way hire, dismiss, control the day-to-day activities of, or otherwise supervise either the employees of the Greater Pittsburgh Council, or the local volunteers located within this geographical area. Finally, neither an independent chartering organization nor its troop is required to seek permission from BSA before undertaking activities such as are involved in this case

8. The Complaint filed in this matter alleges that Plaintiff, Nicola Deiuliis was severely injured in an automobile accident on August 15, 2004. According to the Complaint, the accident occurred when "an agent and/or registered volunteer" of BSA, "while in the course of his duties.. . willfully, recklessly or negligently drove the motor vehicle which he was operating, in which [Nicola] was a passenger, off the roadway and into a ditch and then an embankment."

9. Plaintiffs' have alleged that the vehicle, a van, was driven by a Mr. Samuel Lombardo while returning from a "Boy Scouts outing" in Ohio Pyle State Park in Pennsylvania.

10. At the time of the accident alleged in the Complaint, Mr. Lombardo was volunteering his time as an unpaid adult volunteer to Troop 903, and involved in an activity supervised by, and planned by, Troop 903 and/or its troop committee.

11. As an unpaid adult volunteering specifically with Troop 903, Mr. Lombardo had no employment or agency relationship whatsoever with BSA. In addition, BSA never supervised Mr. Lombardo's volunteer activities with Troop 903, either directly or indirectly.

Further deponent sayeth not.

Michael C. Childers

Michael C. Childers

Sworn to and subscribed before me this
8 day of March, 2006

Rosalie Pyrih

Notary Public

ROSALIE PYRIH
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/5/2009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Appendix in Support of Motion for Summary Judgment, has been served upon all counsel of record by United States First Class Mail, postage prepaid, this 9th day of March, 2006, addressed as follows:

Victor H. Pribanic, Esquire
1735 Lincoln Way
White Oak, PA 15131

BURNS, WHITE & HICKTON

BY: ______________________
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Boy Scouts of America National Council